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## RECENT IMPORTANT DECISIONS.

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**ANIMALS—ABUSE—MALICE TOWARD THE OWNER.**—Defendant was prosecuted under section 11,581 Mich. Comp. Laws, which provides a penalty for wilfully and maliciously killing, maiming, or disfiguring the horses, cattle or other beasts of another. The particular offence charged was that the defendant had put a strap around the tongue of another's horse and had pulled upon it until he had injured the animal so badly that it had to be killed. The evidence conclusively showed that the acts were committed because the defendant became angry at the animal for refusing to do its work, and not because of any malice or ill-will toward the owner. A verdict of guilty was affirmed by the Supreme Court. *People v. Tessmer* (Mich. 1912) 137 N. W. 214.

The court attempts to distinguish, but seems to overrule, a previous case construing the same statute, in which it was said, "Malice is an essential ingredient of the crime, and under the clear weight of authority, both in England and the United States, the malice required must be toward the owner or custodian of the animal, and not malice toward the animal." *People v. Minney*, 155 Mich. 534. In *State v. Harris*, 11 Iowa 414, the court held, "Malice toward the owner of the animal is the ingredient of this offence." See *United States v. Gideon*, 1 Minn. 226; *Chappell v. State*, 35 Ark. 345; *State v. Newby*, 64 N. C. 23; 2 Cyc. 429. That the statute in the principal case was enacted to protect the owner and not to protect the animal seems clear from the considerations that the animal must belong "to another," that the statute is classified under the head, "Offences Against Property," and that another section of the Michigan statutes provides a penalty for cruelty to animals. Among the old English statutes directed against malicious mischief the most noted was the "Black Act." (9 Geo. I. ch. 22.) Of the Black Act it was said, "It is clearly settled, that in order to bring an offender within this law the malice must be directed against the owner of the cattle and not merely against the animal itself." 2 East P. C. 1072. "In the United States most statutes prescribing a penalty for the malicious destruction of property are sufficiently like those of England to warrant the inference that they were modeled upon them, and for this reason they have generally, but not always, been given the same construction." *State v. Boies*, 68 Kan. 167; 25 Cyc. 1676.

**ASSAULT AND BATTERY—APPARENT ABILITY.**—Defendant was charged with committing an assault upon H. The evidence showed that defendant pointed a gun at H; that W, who was with H, immediately covered defendant with his gun; that H did not see what was going on until defendant was hors de combat by reason of being covered by the gun in the hands of W. There was no evidence to show that defendant's gun was loaded. *Held*, (SMITH, J., dissenting), that an order directing a verdict of not guilty was proper. *State v. Barry* (Mont. 1912) 124 Pac. 774.